

**LAW OFFICES OF
MILLER & VAN EATON, P.L.L.C.**
A PROFESSIONAL LIMITED LIABILITY CORPORATION
1155 CONNECTICUT AVENUE, N.W.
SUITE 1000
WASHINGTON, D.C. 20036-4306

MATTHEW C. AMES
FREDERICK E. ELLROD III
STEPHEN J. GUZZETTA
WILLIAM L. LOWERY

WILLIAM R. MALONE
NICHOLAS P. MILLER
MARIA F. SILVEIRA*
JOSHUA VAN EATON

INCORPORATING THE PRACTICE OF
MILLER & HOLBROOKE

*ADMITTED TO PRACTICE IN
FLORIDA ONLY

WWW.MILLERVANEATON.COM
TELEPHONE (202) 785-0600
FAX (202) 785-1234

DOCKET FILE COPY ORIGINAL

RECEIVED

OCT 30 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 30, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M. Street, N.W., Room 222
Washington, D.C. 20554

Re: Comments in MM Docket No. 97-182, Preemption of State and Local
Zoning and Land Use Restrictions on the Siting, Placement, and
Construction of Broadcast Station transmission Facilities.

Dear Mr. Caton:

Enclosed for filing you will find an original and four copies of the comments of
Montgomery County, Maryland in the above referenced docket.

Please contact the undersigned with any question.

Very truly yours,

Miller & Van Eaton, P.L.L.C.

By


Matthew C. Ames

cc: Hon. Reed E. Hundt
Hon. James H. Quello
Hon. Rachelle B. Chong
Hon. Susan Ness
William E. Kennard, General Counsel
Roy J. Stewart, Mass Media Bureau Chief

G:\client\104257\01\FCC cover letter.doc

No. of Copies made
DATE

024



DOCKET FILE COPY ORIGINAL
RECEIVED

OCT 30 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 30, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N. W., Room 222
Washington, D.C. 20554

Re: Comments in MM Docket No. 97-182, Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement, and Construction of Broadcast Station Transmission Facilities

Dear Mr. Caton:

This is to express our strong opposition to the Federal Communications Commission's proposed preemption of local zoning authority over the siting and placement of broadcast transmission facilities. The proposal denies the County and other local governments the ability to take reasonable measures to protect the safety and property of residents, which is a fundamental responsibility of local government and which the Commission is ill-equipped to perform. Such a preemption is clearly contrary to the intent of Congress, under the 1996 Telecommunications Act, to preserve local authority in the siting of telecommunications transmission facilities.

The Commission should not presume that local siting and building requirements will obstruct the roll out of advanced television. We believe that local governments are uniquely qualified to achieve balance between the interests of citizens who are concerned about the aesthetic qualities and safety of their communities and providers who need to deliver these services. Like local communities nationwide, our County has a zoning and land use process designed to consider and accommodate the interests of all parties. Our citizens want these services, and in Montgomery County, we have already amended our zoning law and created a process which assists providers and speeds the siting of towers and telecommunications facilities.

The proposed rules are also troubling because they require action on requests related to broadcast antenna siting within 45 days. This does not allow adequate time for public notice and comment, and also denies local governments the benefit of meaningful citizen involvement.

If the Commission's goal is to accelerate the deployment of digital television services, the proposed rules are far broader than is necessary. The rules not only preempt local decision time frames and local zoning laws, but also building and safety codes and any regulations that might

Mr. William F. Caton
October 30, 1997
Page 2

"impair" a broadcaster's ability to engage in a variety of activities not necessarily related to digital television (DTV). The rules are not limited to facilities related to DTV or to towers and antennas. For example, the term "associated buildings" could refer to studios or office space. Thus, the rules preempt generally applicable zoning rules governing many other structures in the county and confer a special benefit on broadcasters far beyond what is necessary to accomplish the stated goals.

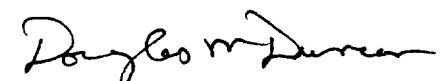
Furthermore, the proposed rules are unnecessary because there is no evidence that the County or other local governments are blocking the development of DTV. In Montgomery County, a new tower siting committee coordinates the processes for negotiating and siting telecommunications facilities. The committee works closely with wireless providers and with various government agencies and departments to facilitate the siting of wireless facilities. In just one year, the committee has recommended over 100 sites (from seven carriers) for approval. Through this process, one new personal communications service (PCS) provider has put its entire network in place in less than a year, and others are close behind. We have every reason to believe that we could accommodate any reasonable request from a broadcaster using this process.

To our knowledge, Montgomery County has not yet received a siting request from a DTV provider. We understand that, in the top ten market areas nationwide, there have been only one or two formal requests to date. Local zoning rules are not the obstacle to deployment of this technology; there are numerous other factors affecting the timetable. The Commission's own internal processes and Federal Aviation Administration approvals may well take longer than local zoning procedures.

Again, we reiterate our strong opposition to the proposed preemption. Over the years, local governments have proven themselves adept at balancing public and private interests to resolve the kinds of issues raised by the proposed rules. We can do so again, and, if the Commission recognizes the wisdom of retaining local processes, we will. We welcome the opportunity to discuss these proposed rules with the Commission and to provide you with any further information about our County's tower siting and zoning procedures.

Sincerely,


Marilyn J. Praisner
President, County Council


Douglas M. Duncan
County Executive

MJP:DMD:fr